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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GLEN ANTHONY WEIST,

Defendant and Appellant.

E063541

(Super.Ct.No. FVI1202036)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Pacheco,
Judge. Affirmed with directions.

Sheila Quinlan, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Glen Anthony Weist appeals from an order denying
his petition to reduce his conviction to a misdemeanor, pursuant to Penal Code

section 1170.18.¹ We direct the court to dismiss count 1 and the prison prior allegations. Otherwise, we affirm the order.

PROCEDURAL BACKGROUND

Defendant was charged by information with first degree residential burglary (§ 459, count 1) and receiving stolen property (§ 496, subd. (a), count 2). The complaint also alleged that defendant had served four prior prison terms (§ 667.5, subd. (b)) and had one prior strike conviction (§§ 1170.12, subds. (a)-(d) & 667, subds. (b)-(i)). On February 19, 2013, defendant entered a plea agreement and pled guilty to count 2 and admitted the prior strike conviction. A trial court sentenced him to a total term of six years in state prison.

In November 2014, California voters approved Proposition 47 (effective November 5, 2014). (§1170.18.) “Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) “Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47.” (*Id.* at p. 1092.)

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

On November 20, 2014, defendant filed a “petition for recall of sentence and resentencing pursuant to Proposition 47” in propria persona. At a hearing on December 12, 2014, the court determined that defendant’s charge did not qualify for relief under Proposition 47 and denied the petition.

On January 9, 2015, defendant filed a motion for reconsideration, again in propria persona.

The court held a hearing on March 20, 2015, and defendant was represented by a public defender. The court stated that it initially found defendant eligible for Proposition 47 relief; however, the ultimate determination would depend on the amount of loss. The prosecutor stated the parties had stipulated that the loss was over \$950, so defendant was ineligible. The public defender agreed, and the court found defendant not eligible for relief.

On May 11, 2015, defendant filed a notice of appeal.

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and one potential arguable issue: whether the court erred in denying defendant’s petition for resentencing under Proposition 47. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

Although not raised by the parties, we note an apparent clerical error. Generally, a clerical error is one inadvertently made. (*People v. Schultz* (1965) 238 Cal.App.2d 804, 808.) Clerical error can be made by a clerk, by counsel, or by the court itself. (*Ibid.* [judge misspoke].) A court “has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts.” (*In re Candelario* (1970) 3 Cal.3d 702, 705.)

In this case, the court neglected to dismiss count 1 and the four prior prison allegations. The plea agreement stated that defendant would plead guilty to one count of receiving stolen property (count 2) and admit the prior strike conviction, in exchange for six years to life in state prison and the dismissal of the remaining count and allegations. Defendant pled guilty to count 2 and admitted the prior strike. However, the court did not dismiss count 1 or the prior prison allegations. Nonetheless, the minute order states that the court ordered count 1 and the prior allegations dismissed, on motion of the People. Neither party mentioned the court’s failure to dismiss count 1 and the prior prison allegations below or on appeal. Thus, the record indicates that the parties intended that count and allegations to be dismissed. It is evident the court’s failure to order the dismissal was inadvertent. Accordingly, in the interest of clarity, we will direct the trial court to dismiss count 1 and the four prior prison allegations dismissed.

DISPOSITION

The trial court is directed to order the dismissal of count 1 and the four prison prior allegations. In all other respects, the judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

McKINSTER
J.

KING
J.